In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1565

DENNIS RAIMONDI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the District of Rhode Island, petitioner was convicted of having conspired to hijack an interstate shipment (18 U.S.C. 659) in violation of 18 U.S.C. 371. He was sentenced to imprisonment for four years and fined $10,000. The court of appeals affirmed with an opinion (Pet. App. A, pp. 14–20).

1. Petitioner alleges that the search of certain premises at 99 Tell Street, Providence, Rhode Island, which led to the seizure of the goods taken from the hijacked truck, was illegal. Petitioner claims that the affidavit submitted in support of the warrant was

inadequate to establish probable cause to believe that the goods would be found.[1] The court of appeals, after a thorough discussion of the facts and applicable law, correctly rejected this argument (Pet. App. A). We rely on its opinion here.

2. Petitioner claims that reversible error was committed when the prosecutor failed to turn over prior statements and grand jury testimony of the driver of the vehicle that was hijacked. Petitioner alleges that this material, which was turned over when the driver was called as a defense witness, contained exculpatory evidence and should have been made available to him prior to trial. The court of appeals found that while "the favorable nature of these statements is at best highly conjectural" (Pet. App. A, p. 18), the allegedly exculpatory statements were attributed to the driver in the affidavit for the search warrant of which petitioner was aware. Accordingly, the court found (*ibid.*) that the failure to turn over other material, which essentially contained the same information, did not prejudice petitioner. Petitioner does not seriously dispute this finding but asserts that "the degree of prejudice should [not] be the criteria in determining whether there has been a

[1] Petitioner does not allege that the premises searched belonged to him or that he "had an interest in connection with the searched premises that gave rise to a 'reasonable expectation [on his part] of freedom from governmental intrusion' upon those premises." *Combs* v. *United States*, No. 71-517, decided June 26, 1972. Petitioner was not charged with possession and would not have automatic standing. *Jones* v. *United States*, 362 U.S. 257; cf. *Combs* v. *United States*, *supra*. The issue of petitioner's standing was not raised or considered below.

due process violation * * *" (Pet. 12). This argument is without merit. *Giglio* v. *United States*, 405 U.S. 150, 154; *United States* v. *DeLeo*, 422 F. 2d 487, 498–499 (C.A. 1), certiorari denied, 397 U.S. 1037.

3. Petitioner contends that the district court improperly permitted a defense witness, who was an attorney of one McDonald, a principal government witness, to invoke the attorney-client privilege as to a conversation he had with McDonald in the presence of the latter's father. Petitioner claims that the attorney would have testified that McDonald had told him that petitioner was not involved in the hijacking. The court of appeals, after carefully reviewing the record, held that the district court did not abuse its discretion in permitting the attorney to invoke the attorney-client privilege (Pet. App. A, p. 20). In any event, the court of appeals also found that any error committed in sustaining the privilege was harmless because an affidavit of McDonald's stating that petitioner was not involved in the scheme—which contained the same denial as to petitioner's participation sought to be elicited from the attorney—was already before the jury (Tr. III, part 2, pp. 22–23). In these circumstances, the court of appeals correctly held that petitioner "was [not] materially prejudiced" by permitting the attorney to invoke the attorney-client privilege (Pet. App. A, p. 20).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1972.

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